

## **Guidance on answering the discussion questions in the book**

### **Para 16.12**

**Can you conceive of circumstances in which use of the name of another person's house might be passing off? Is a political party any less in business than a charity? What about a school? Or a university?**

Use of the name of a house might be passing off where you use the name of the house in business, for example, that of a stately home open to the public. Political parties have to raise revenues through using their names, as do schools (especially in the private sector) and universities; so it is difficult to see why they should not be able to protect their badges of identity in the market place by common law as well as statutory means.

### **Para 16.19**

**Can you think of any other classes of product on the market in which the goodwill attaches to the product, whoever and no matter how many, manufacture it?**

Think about classes of product which have particular characteristics or which are made in a specific way. For example, what about types of yoghurt such as the Icelandic yoghurt, 'Skyr'? Perhaps some types of cheese? Types of cured meat, like 'Serrano' ham? Or perhaps further types of alcoholic drink?

### **Para 16.39**

**Review the range of findings of misrepresentation in *Westwood v Knight* [2011] EWPC 8, paras 157–158, 168, 190–191, 200, 202, 204, 212, and 220–221. Is this what you would have expected given the cases discussed previously? Do you agree with the findings regarding Knight’s conduct as a whole, paras 222–226? Compare *Specsavers International Healthcare Ltd v Asda Stores Ltd* [2011] FSR 1, paras 190–192.**

There is limited engagement in *Westwood* with misrepresentation, rather than with goodwill, reputation and evidence. There is consideration of the availability of similar terms in respect of “Let it Rock”. Otherwise the focus is on the use of the terms in the context of use of Westwood related names (including at para 204), and this led to findings of passing off. The same approach is seen in the conclusion in respect of the overall activity of Knight. In *Specsavers v Asda*, there is a more detailed discussion of passing off and a finding that the cumulative effect of the conduct did not amount to misrepresentation. An important part of that is the presence of Asda – can the same point be made in respect of Knight?

### **Para 16.53**

**Consider the previous cases in the light of *Irvine v Talksport* [2002] 2 All ER 414 after you have explored paras 18.47ff). Are they mutually consistent?**

The key difference seems to be that whereas the cases discussed in the preceding paragraphs revolve around arguments about whether the connection falsely represented was one in which the claimant had control over the quality of what the defendant offered (goods or services).

In *Irvine* there was no suggestion of this as the argument was that Irvine was shown as thinking Talksport was a good thing, endorsing it, not that he was responsible for its output.

### **Para 16.69**

**Why do metatags and keywords create problems relevant to the law of passing off?**

**How do the cases discussed previously apply to passing off on the internet?**

Metatags and keywords challenge how we think about misrepresentation. Consider that the use by a trader of a competitor's name as a metatag may mean that a prospective customer is directed to that trader's site instead. This may seem unfair but note that as in *Reed Executive plc v Reed Business Information Ltd* [2003] RPC 12 it may well be very clear to the customer whose website they have visited.

The internet poses new challenges for the law of passing off: think about how passing off applies to instances of keyword advertising in a case such as *Victoria Plum Ltd v Victoria Plumbing Ltd* [2017] ETMR 8. Do you think it is appropriate that keyword bidding could constitute passing off?